

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

BRIAN VINCENT CONRAD,

Plaintiff,

v.

THE WASHINGTON STATE
DEPARTMENT OF CORRECTIONS *et al.*,

Defendants.

Case No. C05-5151FDB

REPORT AND
RECOMMENDATION:

**NOTED FOR:
NOVEMBER 25th, 2005**

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is plaintiff's motion to dismiss. (Dkt. # 22).

Plaintiff indicates he wishes to dismiss this action voluntarily.

Defendants had moved to dismiss at the Fed. R. Civ. P. 12 (b) stage, (Dkt. # 22). Plaintiff originally asked for a 60 day continuance, (Dkt. # 23). When defendants objected to the continuance he filed the motion to voluntarily dismiss the action. (Dkt. # 22).

DISCUSSION

Fed.R.Civ.P. 41(a)(1) gives a plaintiff the right to dismiss an action prior to an answer being filed. The plaintiff may simply file a notice of dismissal. The court considers plaintiff's motion to be

1 such a notice. Plaintiff will still have to pay the filing fee in this action, but the action should be
2 dismissed without prejudice based on plaintiff's motion.

3 CONCLUSION

4 The court should consider plaintiff's motion as a notice of dismissal and this action should be
5 **DISMISSED WITHOUT PREJUDICE.** Plaintiff must still pay the filing fee in this case. A
6 proposed order accompanies this Report and Recommendation.

7 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the
8 parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.
9 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of
10 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule
11 72(b), the clerk is directed to set the matter for consideration on **November 25th, 2005.**

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13 DATED this 31st day of October, 2005.

14 /s/ J. Kelley Arnold
15 J. Kelley Arnold
16 United States Magistrate Judge
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